

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

BERGSTROM, INC.,)	
)	
<i>Plaintiff,</i>)	
)	Case No. 3:09-cv-50078
v.)	
)	Hon. Kapala, U.S.D.J.
GLACIER BAY, INC.,)	
)	Hon. Mahoney, U.S.M.J.
<i>Defendant.</i>)	
)	
)	

**DEFENDANT GLACIER BAY, INC.’S MOTION FOR A SPECIAL PROTECTIVE
ORDER COVERING GLACIER BAY’S SOURCE CODE**

Defendant Glacier Bay, Inc. (“Glacier Bay”), through its counsel, hereby moves this Court for a special protective order providing heightened protection for all versions of Glacier Bay’s ClimaCab source code. The source code at issue is the subject of a Motion to Compel filed by plaintiff Bergstrom, Inc. (“Bergstrom”) (Dkt. No. 84) that is currently before this Court. The grounds for this Motion are further discussed in the attached Declaration of Mary M. Calkins and Memorandum in Support of this Motion.¹

In support of its motion for an additional protective order, Glacier Bay states as follows:

1. This case involves allegations of patent infringement by Bergstrom against its competitor, Glacier Bay, relating to U.S. Patent No. 6,889,762 (the “ ‘762 Patent”), which is directed to vehicle heating and cooling systems and is allegedly assigned to Bergstrom.
2. Bergstrom has moved to compel production of relevant versions of Glacier Bay’s ClimaCab source code in OCR’ed TIFF format (Dkt. No. 84), and Glacier Bay is opposing

¹ Additional grounds are contained in Glacier Bay’s Memorandum in Opposition to Bergstrom’s Motion to Compel, being filed concurrently herewith.

Bergstrom's motion on the basis that no prosecution bar provision applies to the source code at issue.

3. The parties do not dispute the relevance and responsiveness of the source code sought, but rather dispute the proposed method of production and whether heightened protection, particularly a prosecution bar, is needed to protect Glacier Bay's highly sensitive source code.

4. Bergstrom has rejected an alternative proposal by Glacier Bay to produce the source code on a laptop at Foley and Lardner facilities for inspection by Bergstrom's expert and a Reinhart attorney (the "laptop inspection proposal"), which scheme Glacier Bay has agreed would not require a special protective order.

5. Counsel for Bergstrom and Glacier Bay met and conferred on this issue by telephone on December 11, 2009, but despite good faith efforts, were unable to reach an agreement.

6. Both the "Confidentiality Stipulation and Protective Order" entered by this Court (Dkt. No. 40) and the January 5, 2009 opinion of this Court regarding the Protective Order (Dkt. No. 34-2) allow Glacier Bay to move for a special protective order, including a prosecution bar provision, with respect to particular highly sensitive information, such as the source code at issue.

Glacier Bay respectfully requests that, if the Court grants Bergstrom's Motion to compel production of Glacier Bay's ClimaCab source code in OCR'ed TIFF format (or a similar document format), it also grant Glacier Bay's Motion For a Special Protective Order. Alternatively, if this Court either chooses to deny Bergstrom's Motion, or order that the source code be produced for inspection via Glacier Bay's "laptop inspection proposal," Glacier Bay

notes that the foregoing Motion would become moot as no special protection for the source code would then be required.

Additional facts and law supporting this Motion are contained in Glacier Bay's accompanying Declaration of Mary M. Calkins and its Memorandum filed in support of this Motion. A proposed order will be submitted to Proposed_Order_Mahoney@ilnd.uscourts.gov by e-mail.

Dated: January 8, 2010

Respectfully submitted,

/s/ Mary M. Calkins

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CERTIFICATE OF SERVICE

I, Mary M. Calkins, an attorney, hereby certify that on January 8, 2010, the foregoing document was filed with the Clerk of Court using the CM/ECF system, which will send an electronic copy to all counsel of record that have consented to electronic service.

/s/ Mary M. Calkins
Mary M. Calkins